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OF THE

COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES

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MARKUP OF HOUSE RESOLUTION 87, IMPEACHMENT OF JUDGE WALTER L. NIXON, JR.

TUESDAY, MARCH 4, 1989

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 3 o'clock p.m., in room 2226, Rayburn House Office Building, Hon. Don Edwards (chairman of the subcommittee) presiding.

Present: Representatives Edwards, Kastenmeier, Conyers, Schroeder, Crockett, Sensenbrenner, Dannemeyer, and James.

Staff present: Catherine A. LeRoy, counsel; Daniel M. Freeman, counsel; and Colleen Kiko, minority counsel.

Also present: Alan Baron, special counsel; Pamela Naughton, assistant special counsel; Peter Keith, assistant special counsel; Kitty Urban, clerk; and Douglas Bellis, assistant counsel, Office of Legislative Counsel.

Mr. EDWARDS. The subcommittee will come to order.

Mr. SENSENBRENNER. Mr. Chairman, I ask unanimous consent that the subcommittee permit coverage of this meeting, in whole or in part, by television broadcast, radio broadcast, and still photography, in accordance with Committee Rule 5.

Mr. EDWARDS. Without objection, so ordered.

Without objection, the memorandum of counsel for Judge Nixon, addressing the question of whether ethical violations on the part of a judge constitute grounds for impeachment, will be made a part of the record.

Pursuant to notice, I call up the resolution H. Res. 87 for purposes of markup. The Clerk will read the resolution.

Mr. FREEMAN. H. Res. 87, resolved, that Walter L. Nixon, Jr., a judge of the United States District Court for the Southern District of Mississippi, be impeached for high crimes and misdemeanors.

Mr. EDWARDS. I have an amendment in the nature of a substitute at the desk, which I direct the Clerk to read.

Mr. FREEMAN. Amendment in the nature of a substitute to H. Res. 87 offered by Mr. Edwards of California.

Strike all after the resolving clause and insert the following:

That Walter L. Nixon, Jr., a judge of the United States District Court for the Southern District of Mississippi, be impeached for high crimes and misdemeanors, and that the following articles of impeachment be exhibited to the Senate:

Articles of impeachment exhibited by the House of Representatives of the United States of America in the name of itself and all of the people of the United States of America, against Walter L. Nixon, Jr., a judge of the United States District Court for the Southern District of Mississippi, in maintenance and support of its impeachment against him for high crimes and misdemeanors.

Article I. On July 18, 1984, Judge Nixon testified before a Federal grand jury empaneled in the United States District Court for the Southern District of Mississippi (Hattiesburg Division) to investigate Judge Nixon's business relationship with Wiley Fairchild and the handling of the criminal prosecution of Fairchild's son, Drew Fairchild, for drug smuggling. In the course of his grand jury testimony, and having duly taken an oath that he would tell the truth, the whole truth, and nothing but the truth, Judge Nixon did knowingly and contrary to his oath make a material false or misleading statement to the grand jury.

The false or misleading statement was, in substance, that Forrest County District Attorney Paul Holmes never discussed the Drew Fairchild case with Judge Nixon.

Wherefore, Judge Walter L. Nixon, Jr., is guilty of an impeachable offense and should be removed from office.

Article II. On July 18, 1984, Judge Nixon testified before a Federal grand jury empaneled in the United States District Court for the Southern District of Mississippi to investigate Judge Nixon's business relationship with Wiley Fairchild and the handling of the prosecution of Fairchild's son, Drew Fairchild, for drug smuggling. In the course of his grand jury testimony, and having duly taken an oath that he would tell the truth, the whole truth, and nothing but the truth, Judge Nixon did knowingly and contrary to his oath make a material false or misleading statement to the grand jury.

The false or misleading statement was, in substance, that Judge Nixon had nothing whatsoever, officially or unofficially, to do with the Drew Fairchild case in Federal court or State court; and that Judge Nixon "never handled any part of it, never had a thing to do with it at all, and never talked to anyone, State or Federal, prosecutor or judge, in any way influence anybody" with respect to the Drew Fairchild case.

Wherefore, Judge Walter L. Nixon, Jr., is guilty of an impeachable offense and should be removed from office.

Article III. By virtue of his office as a judge of the United States District Court for the Southern District of Mississippi, Judge Nixon is required to uphold the integrity of the judiciary, to avoid impropriety and the appearance of impropriety, and to obey the laws of the United States.

Judge Nixon has raised substantial doubt as to his judicial integrity, undermined confidence in the integrity and impartiality of the judiciary, betrayed the trust of the people of the United States, disobeyed the laws of the United States and brought disrepute on the Federal courts and the administration of justice by the Federal courts by the following:

After entering into an oil and gas investment with Wiley Fairchild, Judge Nixon conversed with Wiley Fairchild, Carroll Ingram, and Forrest County District Attorney Paul Holmes concerning the State criminal drug conspiracy prosecution of Drew Fairchild, the

son of Wiley Fairchild, and thereafter concealed those conversations as follows:

(1) Judge Nixon concealed those conversations through one or more material false or misleading statements knowingly made to an attorney from the United States Department of Justice and a special agent of the Federal Bureau of Investigation during an interview of Judge Nixon conducted in Biloxi, MS, on April 19, 1984. The substance of the false or misleading statements included the following:

(a) Judge Nixon never discussed with Wiley Fairchild anything about Wiley's son's case;

(b) Wiley Fairchild never brought up his son's case;

(c) at the time of the interview, Judge Nixon had no knowledge of the Drew Fairchild case and did not even know Drew Fairchild existed, except for what the judge previously read in the newspaper and what he learned from the questioners in the interview;

(d) nothing was done, or nothing was ever mentioned, about Wiley Fairchild's son;

(e) Judge Nixon had never heard about the Drew Fairchild case, except what he told the questioners in the interview, and certainly had nothing to do with the case;

(f) Judge Nixon had done nothing to influence the Drew Fairchild case;

(g) State prosecutor Paul Holmes never talked to Judge Nixon about the Drew Fairchild case.

(2), Judge Nixon further concealed his conversations with Wiley Fairchild, Paul Homes, and Carroll Ingram concerning the Drew Fairchild case by knowingly giving one or more material false or misleading statements to a Federal grand jury during testimony under oath in Hattiesburg, MS, on July 18, 1984. The substance of the false or misleading statements included the following:

(a) Paul Holmes never discussed the Drew Fairchild case with Judge Nixon;

(b) to the best of his knowledge and recollection, Judge Nixon did not know of any reason he would have met with Wiley Fairchild after the Nixon-Fairchild oil and gas investment was finalized in February of 1981;

(c) Judge Nixon gave the grand jury all the information that he had and that he could, and had withheld nothing during his grand jury testimony;

(d) Judge Nixon had nothing whatsoever unofficially to do with the Drew Fairchild criminal case in State court;

(e) Judge Nixon never talked to anyone, including the State prosecutor, about the Drew Fairchild case;

(f) Judge Nixon never had a thing to do with the Drew Fairchild case at all;

(g) Judge Nixon "never talked to anyone, State or Federal, prosecutor or Judge, in any way influence anybody" with respect to the Drew Fairchild case.

Wherefore, Judge Walter L. Nixon, Jr., is guilty of an impeachable offense and should be removed from office.

Mr. EDWARDS. On March 15, 1988, the Judicial Conference of the United States certified to the Speaker of the House of Representatives the findings of the Judicial Council of the Fifth Circuit, stated

that Judge Walter L. Nixon, Jr., had engaged in conduct which might constitute one or more grounds for impeachment.

On March 17, 1988, House Resolution 407 was introduced calling for Judge Nixon's impeachment for high crimes and misdemeanors. The Speaker referred the matter to the Committee on the Judiciary, and on March 22, 1988, Chairman Rodino referred the resolution to this subcommittee for hearings.

Over the ensuing months, the subcommittee conducted its own independent inquiry into Judge Nixon's conduct. We did not welcome the task, but it is a unique function entrusted to us by the Constitution. We have no alternative when significant allegations of judicial misconduct come to our attention.

Judge Nixon is only the second Federal judge in our Nation's history to be convicted of a crime and imprisoned while holding judicial office. The crime for which he was convicted, lying to a grand jury in testimony under oath, is particularly serious because a judge must bear the awesome responsibility of swearing witnesses, judging credibility, and finding the truth in cases that come before him.

At first glance, the task before us seemed distasteful but simple. It seemed outrageous that a Federal judge, who has not heard cases for 3½ years, who has been convicted by a jury of his peers for perjury, and has been sentenced to five years in prison, who exhausted his appellate rights without success, and has already served a full year in prison, may continue to collect his judicial salary and can expect to return to the bench after his sentence is completed.

Yet, under our Constitution, a Federal judge holds life tenure and remains in office until Congress says otherwise, and in the impeachment proceedings involving Harry Claiborne, the only other Federal judge convicted of a crime, the Senate insisted that the mere fact of conviction alone cannot be ground for impeachment and said Congress bears the constitutional obligation to conduct an independent investigation of the facts.

I believe the Framers of the Constitution and the Senate, in deciding the Claiborne case, showed wisdom in not providing for automatic removal of judges upon conviction of a crime. Although I have faith in our law enforcement agencies and court systems and appreciate the fine work they do, mistakes are sometimes made. My personal experience in the civil rights movement and on this subcommittee has convinced me that, even in this country, a prominent official might be unjustly investigated and prosecuted, unfairly tried and convicted, because of race, political affiliation, or simply because he is an attractive target for over-eager prosecutors.

Because of constitutional principles of separation of powers, the need to preserve an independent judiciary, and to ensure that Judge Nixon was treated fairly, the subcommittee consciously refused to "rubber stamp" the jury verdict of guilty. Instead, over the past year, we conducted a careful independent investigation of the facts surrounding Judge Nixon's criminal conviction and his fitness to remain on the bench. In six full days of hearings last summer, we heard live testimony from all relevant witnesses, including Judge Nixon himself. We reviewed massive amounts of documentary evidence. An additional hearing was held on March 2 of this

year to address new matters not uncovered during the Department of Justice investigation.

At each stage of the subcommittee's proceedings, Judge Nixon was treated with fairness and courtesy. Judge Nixon was afforded every opportunity to present evidence and to cross-examine witnesses without limitation. His counsel was permitted lengthy oral and written argument, which we carefully reviewed. Virtually every request of his was granted.

Despite healthy skepticism about the Justice Department's pursuit of Judge Nixon, after hearing all the testimony and carefully reviewing hundreds of pages of written argument submitted by Judge Nixon's counsel, I have come to the conclusion that Judge Nixon should be impeached by the House of Representatives and tried by the Senate. There is compelling evidence that Judge Nixon engaged in conduct that not only taints his high office, but is also criminal.

When Federal investigators came to his chambers to interview him about his financial relationship with Wiley Fairchild and the handling of the State criminal prosecution of Fairchild's son, Drew, for drug smuggling, Judge Nixon lied. In that recorded interview, in response to many different questions, in different ways, Judge Nixon categorically denied any involvement or knowledge of any kind about Drew Fairchild and the drug case. Judge Nixon repeated these denials when he testified under oath before the grand jury in Hattiesburg. But, in fact, contrary to his false statements, Judge Nixon did have knowledge of and involvement in Drew Fairchild's case. Judge Nixon chose not to reveal a memorable meeting with Wiley Fairchild, in which Wiley complained that Holmes, the prosecutor, was blackmailing him about his son's case. Judge Nixon chose to conceal a meeting he had with Holmes later the same day, in which he and Holmes talked about the case. Judge Nixon chose to conceal a telephone conversation he had that same evening with Wiley Fairchild, again concerning the Drew Fairchild matter. And Judge Nixon chose to conceal a later telephone conversation with Carroll Ingram, Wiley Fairchild's lawyer, concerning the Drew Fairchild matter.

These actions are the subject of the impeachment articles before us. Article I deals with Judge Nixon's false statement to the grand jury that State prosecutor Holmes never discussed the Drew Fairchild case with him. This same statement was found by the jury to be false and led to Judge Nixon's conviction on one of the perjury counts.

Article II deals with Judge Nixon's statement to the grand jury that he had nothing whatsoever, officially or unofficially, to do with Drew's case, never had a thing to do with it at all, never talked to anybody, including the State prosecutor, about the case, and never influenced anyone with respect to the case. This statement was also found to be false by the jury and led them to convict the judge on a second count of perjury.

Article III charges Judge Nixon with undermining the integrity of the judiciary, disobeying the law, and bringing disrepute on the courts by concealing his conversations concerning the Drew Fairchild case through a series of false or misleading statements during his interview and his grand jury testimony. A total of fourteen

false statements, seven in the interview and seven in the grand jury testimony, including those addressed in the first two articles, are specifically set forth in Article III. Taken together, these statements show a deliberate and indefensible effort to conceal information from the grand jury and Federal investigators.

It is my firm belief that our responsibility is clear, which is to recommend that the House of Representatives impeach Judge Walter L. Nixon, Jr., and that pursuant to Article I, section 2 of the Constitution, he be tried by the United States Senate.

I yield to the gentleman from Wisconsin.

Mr. SENSENBRENNER. Thank you, Mr. Chairman. I move to strike the last word.

Mr. EDWARDS. The gentleman is recognized.

Mr. SENSENBRENNER. Mr. Chairman, today this subcommittee takes the first step in removing Walter Nixon from the privilege of sitting as a United States District Judge. Almost a year ago today, I became a cosponsor of the impeachment resolution and strongly believe it should be approved without further delay.

Judge Nixon stands before this subcommittee as only the second Federal judge in the history of our Nation to have been convicted of crimes while in office. The first one, Judge Harry E. Claiborne of Nevada, has already been impeached and removed from office.

Judge Nixon was convicted of two counts of perjury, lying to a Federal grand jury. Is there any crime more offensive to the integrity of the judicial process than perjury? The standard applied historically to those judges who have been impeached rests squarely on the issue of judicial integrity. How can a judge, who is a convicted liar, then sit in judgment of anyone? He cannot. Therefore, he must be impeached and removed from office.

Additionally, here we are not only dealing with a Federal judge who has been convicted, but because the conviction involved a crime of deceit, a judge who was indefinitely suspended from the practice of law in Mississippi and Louisiana. Judge Nixon would not even be able to appear or practice in the very court over which he wishes to continue to preside following his release from prison.

Judge Nixon has not presided over any cases since August of 1985, when he was indicted. Since his conviction in February of 1986, he has received a total of $286,500 in salary, and continues to draw his $89,500 a year annual salary while serving in prison. This is outrageous and must stop, and we must proceed as rapidly as possible to end it.

After his conviction was affirmed by the Appellate Court, and the United States Supreme Court refused to hear any further appeals, I sent a letter to Judge Nixon requesting his resignation. He refused, and the only alternative the Congress is left with is the costly and cumbersome process of impeachment. Let me state that because Judge Nixon refused to abide by the decision made by the Judicial branch of Government, we in the Congress are forced to spend literally hundreds of thousands of dollars of the taxpayers' money to support an independent prosecution in the United States Senate. That's his decision. He forced these proceedings today, and we ought to get on with it.

Mr. EDWARDS. Mr. Kastenmeier.

Mr. KASTENMEIER. I have no statement, Mr. Chairman.

Mr. EDWARDS. Mr Dannemeyer.
Mr. DANNEMEYER. No statement, Mr. Chairman.
Mr. EDWARDS. Mr. Conyers.
Mr. CONYERS. I don't have a statement, Mr. Chairman.
Mr. EDWARDS. Mr. James.
Mr. JAMES. I have no statement.
Mr. EDWARDS. Mrs. Schroeder.
Mrs. SCHROEDER. I don't have a statement, Mr. Chairman.
Mr. EDWARDS. Mr. Crockett.
Mr. CROCKETT. No statement, Mr. Chairman.
Mr. EDWARDS. Are there any amendments?

There being no other amendments, the question occurs on the amendment in the nature of a substitute. All those in favor vote "aye".

[Chorus of "ayes".]

Those opposed, vote no.
The Clerk will call the roll.
Mr. FREEMAN. Mr. Kastenmeier.
Mr. KASTENMEIER. Aye.
Mr. FREEMAN. Mr. Conyers.
Mr. CONYERS. Aye.
Mr. FREEMAN. Mrs. Schroeder.
Mrs. SCHROEDER. Aye.
Mr. FREEMAN. Mr. Crockett.
Mr. CROCKETT. Aye.
Mr. FREEMAN. Mr. Sensenbrenner.
Mr. SENSENBRENNER. Aye.
Mr. FREEMAN. Mr. Dannemeyer.
Mr. DANNEMEYER. Aye.
Mr. FREEMAN. Mr. James.
Mr. JAMES. Aye.
Mr. FREEMAN. Mr. Edwards.
Mr. EDWARDS. Aye.
Mr. FREEMAN. Mr. Chairman.
Mr. EDWARDS. The Clerk will report.
Mr. FREEMAN. Eight members have voted aye and no members have voted no.

Mr. EDWARDS. The Chair, noting the presence of a reporting quorum, will now entertain a motion that the resolution be reported favorably to the full committee, as amended.

Mr. SENSENBRENNER. So moved.
Mr. DANNEMEYER. Second.
Mr. EDWARDS. The Clerk will call the roll.
Mr. FREEMAN. Mr. Kastenmeier.
Mr. KASTENMEIER. Aye.
Mr. FREEMAN. Mr. Conyers.
Mr. CONYERS. Aye.
Mr. FREEMAN. Mrs. Schroeder.
Mrs. SCHROEDER. Aye.
Mr. FREEMAN. Mr. Crockett.
Mr. CROCKETT. Aye.
Mr. FREEMAN. Mr. Sensenbrenner.
Mr. SENSENBRENNER. Aye.
Mr. FREEMAN. Mr. Dannemeyer.

Mr. DANNEMEYER. Aye.
Mr. FREEMAN. Mr. James.
Mr. JAMES. Aye.
Mr. FREEMAN. Mr. Edwards.
Mr. EDWARDS. Aye.
Mr. FREEMAN. Mr. Chairman.
Mr. EDWARDS. The Clerk will report.
Mr. FREEMAN. Eight members have voted aye, no members have voted no.
Mr. EDWARDS. So the motion is adopted. Without objection, the staff is directed to make technical and conforming amendments.
Mr. Kastenmeier.
Mr. KASTENMEIER. Mr. Chairman, I move that the subcommittee go into executive session, pursuant to Clause (g)(1) of Rule 11 of the Rules of the House.
Mr. EDWARDS. Pursuant to the rule, the Clerk will call the roll.
Mr. FREEMAN. Mr. Kastenmeier.
Mr. KASTENMEIER. Aye.
Mr. FREEMAN. Mr. Conyers.
Mr. CONYERS. Aye.
Mr. FREEMAN. Mrs. Schroeder.
Mrs. SCHROEDER. Aye.
Mr. FREEMAN. Mr. Crockett.
Mr. CROCKETT. Aye.
Mr. FREEMAN. Mr. Sensenbrenner.
Mr. SENSENBRENNER. Aye.
Mr. FREEMAN. Mr. Dannemeyer.
Mr. DANNEMEYER. Aye.
Mr. FREEMAN. Mr. James.
Mr. JAMES. Aye.
Mr. FREEMAN. Mr. Edwards.
Mr. EDWARDS. Aye.
Mr. FREEMAN. Mr. Chairman.
Mr. EDWARDS. The Clerk will report.
Mr. FREEMAN. Eight members have voted aye, no members have voted no.
Mr. EDWARDS. The motion is agreed to. The room will be cleared of all persons not authorized to be present.
[Whereupon, at 3:20 p.m., the subcommittee proceeded to other business.]

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